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is a doubt as to the true location of a survey, or a question as to the application of a grant to its proper subject-matter.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 723.]

**3. Deeds (§ 119\*)—Location of Land—Questions for Jury.**—Where there is a question as to the true location of a survey, or the application of a grant to its proper subject-matter, this is not a question of construction, but one of fact, to be determined by the jury or the court by the aid of extrinsic evidence.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 428.]

**4. Specific Performance (§§ 6, 32 (2)\*)—Mutuality of Obligation and Remedy—Contracts of Infants.**—An infant may compel specific performance of a contract by an adult to convey land to him, in consideration that the infant shall pay the adult's expenses at a hospital and maintain him during his natural life, where the infant has performed such covenants, as the contract is beneficial to the infant, and, having been fully performed by him, there is no want of mutuality of obligation and remedy.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 499.]

**5. Infants (§ 112\*)—Decrees—Impeachment.**—As a general rule, infants are as much bound by decrees as adults, and can impeach them only for causes for which an adult could impeach them, especially where the decree is in favor of the infant, and in a suit in which he is plaintiff.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 496.]

Appeal from Circuit Court, Tazewell County.

Suit by E. R. Mitchell, by his next friend, against C. W. Asberry and others. From a decree for complainant, defendants appeal. Affirmed.

*J. Powell Royall*, of Tazewell, and *Jackson & Henson*, of Roanoke, for appellants.

*Greever, Gillespie & Divine* and *C. R. Brown, Jr.*, all of Tazewell, for appellee.

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#### JOHNSTON v. PEARSON.

Sept. 20, 1917.

[93 S. E. 640.]

**1. Executors and Administrators (§ 438 (9)\*)—Suit to Enforce Judgment Lien—Necessary and Proper Parties.**—The administrator is a proper, though not a necessary, party to a suit to subject deceased's lands to lien of a judgment, the pleadings admitting the

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

debtor died without personal assets, and no relief against, or accounting by, the administrator being sought.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 709.]

**2. Appeal and Error (§ 1036 (5)\*)—Harmless Error.**—Error in permitting dismissal as against the administrator of suit to subject deceased's lands to a judgment is harmless, the heir making the same defense set up by administrator.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 587.]

**3. Judgment (§ 491\*)—Collateral Attack—Execution—Time of Return—Statute.**—Under Code 1904, § 3220, providing that process, whether original, mesne, or "final," shall be returnable within 90 days of its date, execution returnable at a later date is not merely voidable but void, and its invalidity can be set up in suit to enforce the judgment.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 549, 550.]

Appeal from Circuit Court, Giles County.

Suit by Thomas J. Pearson against H. G. Johnston and others. Decree for complainant, and defendant Johnston appeals. Reversed, and bill dismissed.

*W. B. Snidow*, of Pearisburg, for appellant.

*Williams & Farrier*, of Pearisburg, and *Jackson & Henson*, of Roanoke, for appellee.

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M. C. McCORKLE & SON *v.* KINCAID *et ux.*

Sept. 20, 1917.

[93 S. E. 642.]

**1. Contracts (§ 176 (2)\*)—Written Contract—Construction by Court.**—Construction of a written contract for the sale of growing timber held for the court.

[Ed. Note.—For other case see 3 Va.-W. Va. Enc. Dig. 409.]

**2. Appeal and Error (§ 1064 (2)\*)—Harmless Error—Instruction.**—Where a contract for the sale of growing timber gave the landowners at least two peeling seasons to secure the tanbark on the trees, so that the action of the lumbermen in felling them sooner was a breach of contract, in the landowners' action for the breach an instruction that the jury could determine the meaning of the contract, after considering the writing itself and all evidence, to find whether it was the intention of the parties that the landowners should have two peeling seasons, etc., was harmless as to the lumbermen.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

**3. Evidence (§ 413\*)—Parol Evidence Affecting Writing.—Conver-**

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.